

## § 30.618

of a covered beryllium illness, as applicable.

### **§ 30.618 What happens if this type of tort suit was filed after December 28, 2001?**

(a) If a tort suit described in § 30.615 was filed after December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA if a judgment is entered against them.

(b) If a tort suit described in § 30.615 was filed after December 28, 2001 and a judgment has not yet been entered against the claimant or claimants, they will also be disqualified from receiving any benefits under Part B of EEOICPA unless, prior to entry of any judgment, they dismiss all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that are included in the tort suit on or before the last permissible date described in paragraph (c) of this section.

(c) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, "the date the claimant or claimants first became aware" will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

### **§ 30.619 Do all the parties to this type of tort suit have to take these actions?**

The type of tort suits described in § 30.615 may be filed by more than one individual, each with a different cause of action. For example, a tort suit may be filed against a beryllium vendor by both a covered Part B employee and his or her spouse, with the covered Part B employee claiming for chronic beryllium disease and the spouse claiming for loss of consortium due to the covered Part B employee's exposure to beryllium. However, since the spouse of a

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living covered Part B employee could not be an eligible surviving beneficiary under Part B of EEOICPA, the spouse would not have to comply with the termination requirements of §§ 30.616 through 30.618. A similar result would occur if a tort suit were filed by both the spouse of a deceased covered Part B employee and other family members (such as children of the deceased covered part B employee). In this case, the spouse would be the only eligible surviving beneficiary of the deceased covered Part B employee under Part B of the EEOICPA because the other family members could not be eligible for benefits while he or she was alive. As a result, the spouse would be the only party to the tort suit who would have to comply with the termination requirements of §§ 30.616 through 30.618.

### **§ 30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under Part B of EEOICPA?**

Prior to authorizing payment on a claim under Part B of EEOICPA, OWCP will require each claimant to execute and provide an affidavit stating if he or she filed a tort suit (other than an administrative or judicial proceeding for workers' compensation) against either a beryllium vendor or an atomic weapons employer that included a claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation, and if so, the current status of such tort suit. OWCP may also require the submission of any supporting evidence necessary to confirm the particulars of any affidavit provided under this section.

## **COORDINATION OF PART E BENEFITS WITH STATE WORKERS' COMPENSATION BENEFITS**

### **§ 30.625 What does "coordination of benefits" mean under Part E of EEOICPA?**

In general, "coordination of benefits" under Part E of the Act occurs when compensation to be received under Part E is reduced by OWCP, pursuant to section 7385s-11 of EEOICPA, to reflect certain benefits the beneficiary

receives under a state workers' compensation program for the same covered illness.

**§ 30.626 How will OWCP coordinate compensation payable under Part E of EEOICPA with benefits from state workers' compensation programs?**

(a) OWCP will reduce the compensation payable under Part E by the amount of benefits the claimant receives from a state workers' compensation program by reason of the same covered illness, after deducting the reasonable costs to the claimant of obtaining those benefits.

(b) To determine the amount of any reduction of EEOICPA compensation, OWCP shall require the covered Part E employee or each eligible surviving beneficiary filing a claim under Part E to execute and provide affidavits reporting the amount of any benefit received pursuant to a claim filed in a state workers' compensation program for the same covered illness.

(c) If a covered Part E employee or a survivor of such employee receives benefits through a state workers' compensation program pursuant to a claim for the same covered illness, OWCP shall reduce a portion of the dollar amount of such state workers' benefit from the compensation payable under Part E. OWCP will calculate the net amount of the state workers' compensation benefit amount to be subtracted from the compensation payment under Part E in the following manner:

(1) OWCP will first determine the dollar value of the benefits received by that individual from a state workers' compensation program by including all benefits, other than medical and vocational rehabilitation benefits, received for the same covered illness or injury sustained as a consequence of a covered illness.

(2) OWCP will then make certain deductions from the above dollar benefit received under a state workers' compensation program to arrive at the dollar amount that will be subtracted from any compensation payable under Part E of EEOICPA.

(i) Allowable deductions consist of reasonable costs in obtaining state workers' compensation benefits in-

curred by that individual, including but not limited to attorney's fees OWCP deems reasonable and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing, travel expenses, witness fees, and court reporter costs for transcripts), provided that adequate supporting documentation is submitted to OWCP for its consideration.

(ii) The EEOICPA benefits that will be reduced will consist of any unpaid monetary payments payable in the future and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits under Part E, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the current monetary payments first. If the amount to be subtracted exceeds the monetary payments currently payable, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered Part E employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed (or until further monetary benefits become payable that are sufficient to absorb the surplus).

(3) The above coordination of benefits will not occur if the beneficiary under a state workers' compensation program receives state workers' compensation benefits for both a covered and a non-covered illness arising out of and in the course of the same work-related incident.

**§ 30.627 Under what circumstances will OWCP waive the statutory requirement to coordinate these benefits?**

A waiver to the requirement to coordinate Part E benefits with benefits paid under a state workers' compensation program may be granted if OWCP determines that the administrative costs and burdens of coordinating benefits in a particular case or class of cases justifies the waiver. This decision is exclusively within the discretion of OWCP.